

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

ECF. No. 1258

**THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY
AUTHORITY'S REPLY IN RESPONSE TO THE OVERSIGHT BOARD'S
OPPOSITION TO MOTION OF INTERAMERICAS TURNKEY, INC. TO REVIEW
AND STAY**

1. On September 11, 2017, the Oversight Board² filed *Debtor's Opposition to Motion of Interamericas Turnkey, Inc. to Review and Stay* on behalf of the Commonwealth opposing Interamericas' Motion. In that Opposition, the Oversight Board argues that (i)

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case NO. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808).

² As used in this Reply, (i) "AAFAF" shall mean the Puerto Rico Fiscal Agency and Financial Advisory Authority, as the entity authorized to act on behalf of the Commonwealth and its instrumentalities under the *Enabling Act of the Fiscal Agency and Financial Advisory Authority* (Act 2-2017); (ii) "Commonwealth" shall mean the Commonwealth of Puerto Rico; (iii) "Furlough Action" shall mean *Fin. Oversight and Mgmt. Bd. for Puerto Rico v. Rosselló Nevares*, Adv. Pro. No. 17-0250-LTS (D. P.R. Aug. 28, 2017); (iv) "Governor" shall mean the governor of the Commonwealth of Puerto Rico, Ricardo Rosselló Nevares; (v) "Interamericas" shall mean the movant, Interamericas Turnkey, Inc.; (vi) "Interamericas' Motion" shall mean the *Motion to Review and Stay Debtor's Representative to Deprive the Commonwealth of Internal Revenue*; (vii) "Opposition" shall mean the Oversight Board's Opposition to Motion of Interamericas Turnkey, Inc. to Review and Stay, ECF No. 11258, cited herein as "FOMB Opp. at __"; and (viii) "Oversight Board" shall mean the Financial Oversight and Management Board for Puerto Rico

PROMESA § 305 deprives the Court of subject-matter jurisdiction to consider Interamericas' Motion, (FOMB Opp. at 5–7), and (ii) only to the extent the relief requested by Interamericas' Motion “is a challenge to the certification of the fiscal plan,” PROMESA § 106(e) prohibits the Court from reviewing the fiscal plan,” (FOMB Opp. at 5 n. 4).

2. AAFAF takes no position on whether PROMESA sections 305 and 106(e) prohibit consideration of Interamericas' Motion. AAFAF respectfully submits this reply solely to clarify that those provisions do not foreclose the Court from adjudicating any disputes between the Oversight Board and Governor Ricardo Rosselló Nevares concerning the Oversight Board's proposed government-employee furlough program.

3. Whatever its effect on a lawsuit between the Oversight Board and a creditor, AAFAF does not understand the Oversight Board to argue that PROMESA section 305 deprives this Court of subject-matter jurisdiction over disputes between the Governor and the Oversight Board concerning the Oversight Board's proposed furlough program.

4. As for PROMESA § 106(e), the Oversight Board argues in a footnote stating that the statute bars the Court from considering Interamericas' Motion only “to the extent the requested relief is a challenge to certification of the fiscal plan.” (FOMB Opp. at 5 n.4.)

5. PROMESA § 106(e) deprives United States district courts of jurisdiction to “review challenges to the Oversight Board's certification determinations.” 48 U.S.C. § 2126(e). This provision does not implicate disputes between the Governor and the Oversight Board concerning the proposed furlough program. This is because that dispute focuses on whether the Oversight Board's so-called “amendment” seeking to impose a furlough program is part of the certified fiscal plan at all. (See June 22, 2017 Letter from Governor Rossello to the Oversight Board, attached as Exhibit A; August 4, 2017 Letter from Governor Rossello to President

Trump, Senate Majority Leader McConnell, and House Speaker Ryan, attached as Exhibit B, at 9–10.) In other words, the Furlough Action (and any related disputes that may arise between the Governor and the Oversight Board) asks the Court to determine the scope of the Fiscal Plan—an issue entirely separate and distinct from the Oversight Board’s judgment decisions in certifying the Fiscal Plan. As the Oversight Board implicitly acknowledged in filing the Furlough Action, PROMESA section 106(e) does not bar the Court from considering whether the Oversight Board has the power to impose its proposed furlough program.

6. AAFAF continues to evaluate the Oversight Board’s allegations in the Furlough Action and will respond at the appropriate time. AAFAF continues to reserve all its rights, claims, and defenses concerning the proposed furlough program, which will be advanced in the context of the Oversight Board’s action.

Dated: September 18, 2017
San Juan, Puerto Rico

Respectfully submitted,

/s/ William J. Sushon

John Rapisardi
Suzanne Uhland
William J. Sushon
(Admitted *Pro Hac Vice*)
O'MELVENY & MYERS LLP
7 Times Square
New York, New York 10036
Tel: (212) 326-2000
Fax: (212) 326-2061

-and-

M. Randall Oppenheimer
(Admitted *Pro Hac Vice*)
1999 Avenue of the Stars 8th Floor
Los Angeles, California 90067-6035
Tel: (310) 553-6700
Fax: (310) 246-6779

-and-

Peter Friedman
(Admitted *Pro Hac Vice*)
1625 Eye Street, NW
Washington, D.C. 20006
Tel: (202) 383-5300
Fax: (202) 383-5414

*Attorneys for the Puerto Rico
Fiscal Agency and Financial
Advisory Authority*

/s/ Andrés W. López

Andrés W. López
USDC No. 215311

**THE LAW OFFICES OF ANDRÉS W.
LÓPEZ, P.S.C.**
902 Fernández Juncos Ave.
San Juan, Puerto Rico 00907
Tel: (787) 294-9508
Fax: (787) 294-9519

*Co-Attorney for the Puerto Rico
Fiscal Agency and Financial
Advisory Authority*